

OGC HAS REVIEWED.

28 December 1956

MEMORANDUM FOR: Mr. Houston

SUBJECT : Continuance of Per Diem to Contractor Personnel on Vacation Leave

1. The question has arisen regarding the propriety of providing that field personnel of an Agency contractor performing certain maintenance services at overseas installations may continue to receive per diem during periods of their vacation leave.

2. The Armed Services Procurement Regulations, Section XV, Contract Cost Principles, indicate that vacation pay to the extent required by the contractor's established policy is an allowable item of cost, although no mention of vacation subsistence payments is made. However, since the Section is merely a general statement of standards for the determination and allowance of cost, the absence of a specific provision is not considered significant. And it is observed that this Section also indicates that its failure to mention an item of cost is not intended to indicate that it is either allowable or unallowable.

3. Although no rulings have been found which would preclude the continuance of subsistence payments under the circumstances posed, there are indications that such action would be proper. Thus in the Agency's current contract for field maintenance services with the "P" Corporation, provision is made for the payment of a fixed sum per man per day, which amount includes subsistence, and it is further provided that this rate includes the earned portion of two weeks accrued vacation. Similarly the Department of Navy has informally advised that in the singular instances in which the question has arisen with regard to contractors' field personnel, the answer has been given in the affirmative.

4. Accordingly, there would appear to be no legal objection for the Agency to agree with its contractor that subsistence payments shall continue during the period its field personnel are on

vacation leave. However, it would also seem proper to provide that such payments shall apply only to a specified amount of vacation leave as accrued in the field; and that such leave may be taken only in such quantities and at such times as is satisfactory to the contracting officer or his authorized representative.

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